



MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

5 CFR Part 9901

RIN 3260-AA00

Freedom of Information Act Regulations

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Final rule.

SUMMARY: The Military Compensation and Retirement Modernization Commission (MCRMC) is issuing a final rule, establishing procedures for the public to obtain information from MCRMC under the Freedom of Information Act (FOIA).

DATES: This final rule was effective October 27, 2014.

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Administration and Operations, Military Compensation and Retirement Modernization Commission, at (703) 692-2080 or by email at foia@mcrmc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 2, 2013, the President signed into law the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, Sec. 1095, 127 Stat. 672, 878 (2013)), which created the Military Compensation and Retirement Modernization Commission (MCRMC). To establish procedures to facilitate public interaction with MCRMC, the agency is issuing final regulations under FOIA.

II. The Final Rule

This final rule establishes procedures for MCRMC necessary to implement FOIA, 5 U.S.C. 552. FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under statutory exemptions or exclusions. The procedures established herein are intended to ensure that MCRMC fully satisfies its responsibility to the public to disclose agency information.

III. Procedural Requirements

These regulations establish procedures under FOIA to facilitate the interaction of the public with MCRMC. MCRMC's policy of disclosure follows the Presidential Memorandum of January 21, 2009, "Transparency and Openness," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of openness in FOIA decision making. This final rule parallels the procedures currently used by other agencies to implement FOIA.

MCRMC has determined that good cause exists under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) to waive the notice and comment and delayed effective requirements of the Administrative Procedure Act to publish this regulation as a final rule with a request for comments. MCRMC is a temporary, independent establishment with statutorily defined deadlines and a limited existence. It is the intent of the agency to be as transparent as practicable in making information available to the public. This regulation establishes procedures to facilitate MCRMC's interactions with the public and the public's access to information about MCRMC. In light of this agency's limited duration, as set forth in its enabling legislation, and the need for timely access, MCRMC has decided that full notice and comment rulemaking is impracticable and contrary to public policy. The absence of FOIA regulations could impair the public's ability

to access information. MCRMC has determined that this final rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. This rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Analysis of Public Comments and Final Rule

MCRMC received no comments in response to the Interim final rule for MCRMC's FOIA regulations (79 FR 54567, September 12, 2014). This final rule corrects two inadvertent formatting errors in the interim final rule.

List of Subjects in 5 CFR Part 9901

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 5 CFR chapter XCIX, part 9901, which was published at 79 FR 54567 on September 12, 2014, is adopted as a final with the following changes:

PART 9901—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 9901 continues to read as follows:

Authority: National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, Sec. 1095, 127 Stat. 672, 878 (2013)); 5 U.S.C. 552.

2. Amend §9901.1 by revising paragraph (b)(1) to read as follows:

§ 9901.1 Authority, purpose, and scope.

* * * * *

(b) *Purpose.* (1) The National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, Sec. 1095, 127 Stat. 672, 878 (2013)), established the Military Compensation and Retirement Modernization Commission (MCRMC). MCRMC’s purpose, pursuant to its enabling statute, is to conduct a review of the military compensation and retirement systems and to make recommendations to modernize those systems to:

- (i) Ensure the long-term viability of the All-Volunteer Force by sustaining the required human resources of that force during all levels of conflict and economic conditions;
- (ii) Enable the quality of life for members of the Armed Forces and the other uniformed services and their families in a manner that fosters successful recruitment, retention, and careers for members of the Armed Forces and the other uniformed services; and
- (iii) Modernize and achieve fiscal sustainability for the compensation and retirement systems for the Armed Forces and the other uniformed services for the 21st century.

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3. Revise §9901.3 to read as follows:

§ 9901.3 Requests for records.

(a) *Generally.* Many documents are available on the MCRMC website and MCRMC encourages requesters to visit the website before making a request for records pursuant to this subpart. MCRMC will provide records to individual requesters in response to FOIA requests for records not available on its website.

(b) *Electronic or written requests required.* For records not available on the website, requesters wishing to obtain information from MCRMC should submit a request on the MCRMC website.

If a computer is not available to the requester, a written request may be made to the MCRMC FOIA Officer. Such requests should be addressed to: FOIA Officer, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697–8330 or email to foia@mcrmc.gov. MCRMC will communicate with the requester by email unless he or she specifies otherwise.

(c) *Contents of request.* Requests must include the following:

- (1) A statement that the request is being made under FOIA, the requester’s full name and address, a telephone number at which the requester can be reached during normal business hours, and an email address for the requester, if the requester has one;
- (2) A description of the records sought in enough detail to allow the records to be located with a reasonable amount of effort. The request must identify/describe the records sought and include information such as date, title or name, author, recipient, and subject matter of the records sought, where possible;
- (3) If submitting the request as an *educational institution*, a *non-commercial scientific institution*, or a *representative of the news media*, the request must specifically identify the organization on which the status is based, and if a free-lance representative of the news media, the requester should submit a history of past publications and/or demonstrate a solid basis for expecting publication through a news-media entity;
- (4) A fee waiver, if applicable; and
- (5) If the request is made by mail, the words “FOIA REQUEST” or “REQUEST FOR RECORDS” must be clearly marked on the cover letter, letter, and envelope.

(d) *Perfected requests.* MCRMC will process only perfected requests. A perfected request must meet all of the requirements of this subpart.

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